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HOUSE BILL 487

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING A CRIMINAL PENALTY
FOR PROVIDING ALCOHOL TO A MINOR; AMENDING AND ENACTING
SECTIONS OF THE LIQUOR CONTROL ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Liquor Control Act is
enacted to read:

"[NEW MATERIAL] UNLAWFUL PROVISION OF ALCOHOL TO A MINOR--
PENALTY--EXCEPTION.--

A. It is unlawful for a person to knowingly procure
for or sell, give, serve or otherwise supply alcoholic
beverages to a minor.

B. Whoever violates the provisions of Subsection A
of this section is guilty of a third degree felony and shall be
sentenced pursuant to the provisions of Section 31-18-15 NMSA

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1 1978.

2 C. It is unlawful for a person to negligently
3 procure for or sell, give, serve or otherwise supply alcoholic
4 beverages to a minor.

5 D. Whoever violates the provisions of Subsection C
6 of this section is guilty of a fourth degree felony and shall
7 be sentenced pursuant to the provisions of Section 31-18-15
8 NMSA 1978.

9 E. When a person other than a minor procures
10 another person to sell, serve or deliver alcoholic beverages to
11 a minor by actual or constructive misrepresentation of facts or
12 concealment of facts calculated to cause the person selling,
13 serving or delivering the alcoholic beverages to the minor to
14 believe that the minor is legally entitled to be sold, served
15 or delivered alcoholic beverages, and actually deceives the
16 person by that misrepresentation or concealment, then the
17 procurer and not the person deceived shall have violated the
18 provisions of this section.

19 F. The provisions of this section do not apply
20 when:

21 (1) a licensed physician provides alcoholic
22 beverages for medicinal purposes;

23 (2) alcoholic beverages are used in a
24 religious ceremony;

25 (3) alcoholic beverages are used in the

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1 practice of religious beliefs; or

2 (4) a parent or legal guardian of a minor
3 serves alcoholic beverages to that minor on real property,
4 other than licensed premises, under the control of the parent
5 or legal guardian."

6 Section 2. Section 60-7B-1 NMSA 1978 (being Laws 1993,
7 Chapter 68, Section 22, as amended by Laws 1998, Chapter 80,
8 Section 1 and also by Laws 1998, Chapter 101, Section 1) is
9 amended to read:

10 "60-7B-1. [~~SELLING OR GIVING ALCOHOLIC BEVERAGES TO~~
11 ~~MINORS~~] POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

12 [~~A. It is a violation of the Liquor Control Act for~~
13 ~~a person, including a person licensed pursuant to the~~
14 ~~provisions of the Liquor Control Act, or an employee, agent or~~
15 ~~lessee of that person, if he knows or has reason to know that~~
16 ~~he is violating the provisions of this section, to:~~

17 (1) ~~sell, serve or give alcoholic beverages to~~
18 ~~a minor or permit a minor to consume alcoholic beverages on the~~
19 ~~licensed premises;~~

20 (2) ~~buy alcoholic beverages for or procure the~~
21 ~~sale or service of alcoholic beverages to a minor;~~

22 (3) ~~deliver alcoholic beverages to a minor; or~~

23 (4) ~~aid or assist a minor to buy, procure or~~
24 ~~be served with alcoholic beverages.~~

25 B. ~~It is not a violation of the Liquor Control Act,~~

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1 as provided in Subsection A or C of this section, when a parent
2 or legal guardian of a minor serves alcoholic beverages to that
3 minor on real property, other than licensed premises, under the
4 control of the parent or legal guardian.

5 ~~E.]~~ A. It is a violation of the Liquor Control Act
6 for a minor to buy, attempt to buy, receive, possess or permit
7 himself to be served with alcoholic beverages.

8 ~~[D. In the event a person other than a minor~~
9 ~~procures another person to sell, serve or deliver alcoholic~~
10 ~~beverages to a minor by actual or constructive~~
11 ~~misrepresentation of facts calculated to cause, or by a~~
12 ~~concealment of facts the concealment of which is calculated to~~
13 ~~cause, the person selling, serving or delivering the alcoholic~~
14 ~~beverages to the minor to believe that the minor is legally~~
15 ~~entitled to be sold, served or delivered alcoholic beverages~~
16 ~~and actually deceiving him by that misrepresentation or~~
17 ~~concealment, then that person and not the person so deceived by~~
18 ~~such misrepresentation or concealment shall have violated the~~
19 ~~Liquor Control Act.~~

20 ~~E.]~~ B. As used in the Liquor Control Act, "minor"
21 means a person under twenty-one years of age.

22 ~~[F. In addition to the penalties provided in~~
23 ~~Section 60-6C-1 NMSA 1978, a violation of the provisions of~~
24 ~~Subsection A of this section is a misdemeanor and the offender~~
25 ~~shall be punished as follows:~~

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1 ~~(1) for a first violation, the offender shall~~
2 ~~be:~~

3 ~~(a) fined an amount not more than one~~
4 ~~thousand dollars (\$1,000); and~~

5 ~~(b) ordered by the sentencing court to~~
6 ~~perform thirty hours of community service related to reducing~~
7 ~~the incidence of driving while under the influence of~~
8 ~~intoxicating liquor;~~

9 ~~(2) for a second violation, the offender~~
10 ~~shall:~~

11 ~~(a) be fined an amount not more than one~~
12 ~~thousand dollars (\$1,000);~~

13 ~~(b) be ordered by the sentencing court~~
14 ~~to perform forty hours of community service related to reducing~~
15 ~~the incidence of driving while under the influence of~~
16 ~~intoxicating liquor; and~~

17 ~~(c) have his license, issued pursuant to~~
18 ~~the Alcohol Server Education Act, suspended for a period of~~
19 ~~sixty days; and~~

20 ~~(3) for a third or subsequent violation, the~~
21 ~~offender shall:~~

22 ~~(a) be fined an amount not more than one~~
23 ~~thousand dollars (\$1,000);~~

24 ~~(b) be ordered by the sentencing court~~
25 ~~to perform sixty hours of community service related to reducing~~

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1 ~~the incidence of driving while under the influence of~~
2 ~~intoxicating liquor; and~~

3 ~~(c) have his license, issued pursuant to~~
4 ~~the Alcohol Server Education Act, suspended for a period of one~~
5 ~~year.~~

6 ~~G.]~~ C. A violation of the provisions of Subsection
7 [~~G~~] A of this section is a misdemeanor and the offender shall
8 be punished as follows:

9 (1) for a first violation, the offender shall
10 be:

11 (a) fined an amount not more than one
12 thousand dollars (\$1,000); and

13 (b) ordered by the sentencing court to
14 perform thirty hours of community service related to reducing
15 the incidence of driving while under the influence of
16 intoxicating liquor;

17 (2) for a second violation, the offender
18 shall:

19 (a) be fined an amount not more than one
20 thousand dollars (\$1,000);

21 (b) be ordered by the sentencing court
22 to perform forty hours of community service related to reducing
23 the incidence of driving while under the influence of
24 intoxicating liquor; and

25 (c) have his driver's license suspended

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1 for a period of ninety days. If the minor is too young to
2 possess a driver's license at the time of the violation, then
3 ninety days shall be added to the date he would otherwise
4 become eligible to obtain a driver's license; and

5 (3) for a third or subsequent violation, the
6 offender shall:

7 (a) be fined an amount not more than one
8 thousand dollars (\$1,000);

9 (b) be ordered by the sentencing court
10 to perform sixty hours of community service related to reducing
11 the incidence of driving while under the influence of
12 intoxicating liquor; and

13 (c) have his driver's license suspended
14 for a period of two years or until the offender reaches twenty-
15 one years of age, whichever period of time is greater.

16 ~~[H. A violation of the provisions of Subsection D~~
17 ~~of this section is a misdemeanor and the offender shall be~~
18 ~~punished as follows:~~

19 ~~(1) for a first violation, the offender shall~~
20 ~~be:~~

21 ~~(a) fined an amount not more than one~~
22 ~~thousand dollars (\$1,000); and~~

23 ~~(b) ordered by the sentencing court to~~
24 ~~perform thirty hours of community service related to reducing~~
25 ~~the incidence of driving while under the influence of~~

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1 ~~intoxicating liquor;~~

2 ~~(2) for a second violation, the offender shall~~
3 ~~be:~~

4 ~~(a) fined an amount not more than one~~
5 ~~thousand dollars (\$1,000); and~~

6 ~~(b) ordered by the sentencing court to~~
7 ~~perform forty hours of community service related to reducing~~
8 ~~the incidence of driving while under the influence of~~
9 ~~intoxicating liquor; and~~

10 ~~(3) for a third or subsequent violation, the~~
11 ~~offender shall be:~~

12 ~~(a) fined an amount not more than one~~
13 ~~thousand dollars (\$1,000);~~

14 ~~(b) ordered by the sentencing court to~~
15 ~~perform sixty hours of community service related to reducing~~
16 ~~the incidence of driving while under the influence of~~
17 ~~intoxicating liquor; and~~

18 ~~(c) sentenced to a jail term of not less~~
19 ~~than two days and not more than five days.]"~~

20 Section 3. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2004.